

DOCKETED

(10)

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

74 C 1030

MIDWAY MANUFACTURING COMPANY:

Deposition of

vs. : Ralph Baer

THE MAGNAVOX COMPANY : Tenth Day

and : 74 Civ 1657 CBM

SANDERS ASSOCIATES, INC. :

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

THE MAGNAVOX COMPANY, et al : **Consolidated Actions**

vs. : 74 C 1030

74 C 2510

BALLY MANUFACTURING : 75 C 3153

CORPORATION, et al : 75 C 3933

Continued deposition taken

pursuant to subpoena and notice at the Sanders Associates,
Inc.; Headquarters, Spit Brook Road; Nashua, New Hampshire;
Thursday, February 12, 1976; commencing at nine-thirty
in the forenoon.

FILED

OCT - 8 1976

ERNEST W. NOLIN & ASSOCIATES
General Stenographic Reporters
369 ELGIN AVE., MANCHESTER, N. H. 03104
TELEPHONE: 623-6906

ORIGINAL

asked you to arrange PRESENT:ents in the file
marked exhibits in For Midway Manufacturing
Company, Bally Manufacturing
Corporation and Empire:

these documents concern Donald L. Welsh, Esq., 135 South
LaSalle Street, Chicago,
Illinois. At the present time, we do not know

you now to identify For Atari, Inc.:

you can? Thomas O. Herbert, Esq.,
160 Sansome Street, 15th Floor,
San Francisco, California.

in my handwriting which For Sanders Associates, Inc.,
and Magnavox Company:

preliminary telephone to my office on January 22, 1968,
James T. Williams, Esq.,
get telephone number 77 West Washington Street,
Chicago, Illinois.

cooperation with the attorney and I do not know
For Sanders Associates:

Xerox copy of an affidavit in Courtland House dated
February 1, 1968, where Richard I. Seligman, Esq.,
Daniel Webster Highway, South,
originating in Belmont Nashua, New Hampshire.

When did you prepare Stenotype Reporter:

Q. I didn't really know. Ronald J. Hayward

it is not clear now whether it is his name except the
RALPH BAER

initial contact or inquiry after the hearing,
called as a witness, having been previously sworn, was
second telephone or by Teletron, he or another,
further examined and continued his testimony as follows:

Is there anything other than that.
(Interrogatories by Mr. Welsh.)

Q. At the close of yesterday's session, Mr. Baer, I
really don't know what it belongs. It could be mine

asked you to arrange the documents in the file marked Exhibit 22 in chronological order as best you could and then I asked the reporter to mark these documents consecutively with numbers 22-1 and so on; and the last document was 22-52. I asked you now to identify document 22-1 and 22-2, if you can? Starting with 22-1, the hearing is

A. Yes, both of these, both 22-1 and 22-2, are notes in my handwriting which basically represent some preliminary thinking on my part on how one might get television games going as a business, in fact, through cooperation with TelePromter. And 22-3 is a Xerox copy of an article in Electronic News of February 15, 1968, which talks about local channel origination equipment for use with CATV systems.

Q. When did you prepare Exhibits 22-1 and 22-2?

A. I don't really know. Trying to reconstruct it, it is not clear now whether that was done after the initial contact or possibly after the first or second visit from or to TelePromter or whether it was done earlier than that. So although I put the piece of paper up here in this order, I am not really sure where it belongs. It could be that it

wasn't generated until after we had had some contacts via visits with each other.

3 Q. I wonder if you could read for us the material on Exhibits 22-1 and 22-2? There appear to be abbreviations and so I wonder if you would read that for us?

A. Certainly. Starting with 22-1, the heading is, "Possible Approaches To TVG," meaning TV-games. One, subheading, attack CATV market first. Develop equipment in cooperation with TelePrompter. Sanders designs and builds prototype black boxes, TelePrompter provides guidance, tests installations of small quantity of units. Provides part-time (fixed schedule) consulting services of one man familiar with and active in CATV, program origination, audience reaction, show production, etc. Sanders gets six months exclusive license on cooperation with TelePrompter. TelePrompter will not engage with others for television games for this period. Come to agreement on manufacturing rights. There is an asterisk with a footnote saying TelePrompter also provides guidance on following: Practical and legal restrictions on attachments to TV sets. And

proceeding with the main paragraph, possible schedule: (A) TelePrompter and Sanders meeting. TelePromter management and program/technical person, all day session to discuss technical approaches (Sanders flip chart presentation for kick-off). Determine objectives of TV games for CATV. Reach preliminary agreement on equipment to be developed; for example, gun games. TelePromter to establish allowable cost basis (all elements) to provide guide for equipment complexity allowable.

(B) Develop equipment: cost share program with TelePromter as discussed in 1A above. Item (C) no entry. On the next page, 22-2, the heading of that page is question for Harold Pope and Lou Etlinger. It is questions, plural, I guess. One, can I bring Kahn up to show television games to establish credence and start discussions of CATV application. Two, if so, will Harold Pope okay \$25,000 I R & D funding for support of CATV development work in cooperation with TelePromter. Three, will Harold Pope okay manufacturing rights deal allowing Sanders to bid competitively against others in exchange for license fee rights on equipment made

and installed (?) by other manufacturers. Non-exclusive arrangement permitting us to manufacture also for other CATV, etc., organizations. Item 4, no entry.

4 Q. Does reading this refresh your recollection or give you a better idea as to when this was prepared in relation to when you had your first meeting with TelePrompter?

A. Well, the second page, of course, raises the question whether we can bring Irving Kahn up here so it must have been prior to his coming up here and I would guess that was also prior to Schlaffy being up here because I initially, from what we will see in the next letter, I think we initially contacted Irving Kahn, but Irving sent Schlaffy up first. So this piece of paper must have been generated before either one of them came up (That is only a guess on my part) and with some initial thinking of

A. what might come out of a meeting and an association. That is as far as I can go, Mr. Welsh.

5 Q. Referring to the first part of the first paragraph, there appears the phrase "Sanders Associates designs and builds prototype black boxes." What did you

intend would be in such boxes? As it

A. Well, some version of TV games that were based on the breadboards that we had built to that date, like Exhibit 30 which we studied yesterday which

Hopefully based on inputs from TelePrompter and based on their expertise with the field as to what might sell to the subscriber clientele out there. I really called John and if you can't

Q. Did you consider the TV games circuitry design of Exhibit 30 to be complete enough to demonstrate to persons like TelePrompter?

A. It was complete enough to demonstrate a method

A. ...of playing television games; but, as you say, it

Was a breadboard, he come?

Q. But were you satisfied with what you could accomplish

with it to attempt to interest other people in

4. Please use the next exhibit, Exhibit 10, which is a copy of

A. I certainly thought that it should arouse interest
in the general idea.

Q . And that is really what led to your looking into
ways to get into a business with that circuitry?

A. Well, something based on that circuitry.

- 9 Q. Would you now please identify Exhibit 22-4?
- A. 22-4 is a letter sent under my signature to Mr. Irving Kahn, then president of TelePrompter, on January 8, 1968.
- 10 Q. That was a result of a telephone conversation that you spoke about yesterday to Mr. Kahn?
- A. Yes; as I reconstructed from reading this. I thought I talked to Schlaffy first, but it appears from this that I really called Kahn and it was Kahn that suggested that they both come up and eventually sent up Schlaffy alone because he couldn't make it for some other reason.
- 11 Q. And Mr. Schlaffy actually did come to Sanders?
- A. Yes, he did.
- 12 Q. And what date did he come?
- A. On the 18th of January, '68.
- 13 Q. How do you fix that date?
- A. Because the next exhibit, 22-5, which is a letter from Schlaffy to me, refers to his visit here the day before on the 18th.

MR. WELSH: I'd like the reporter now to mark these two documents as Exhibits 22-4A and 22-4B.

up here to my office (Whereupon, Exhibits 22-4A
this document before, and 22-4B were marked for
Sanders' legal department identification.)

Q. You were not present MR. WELSH: Mr. Williams,
Exhibits 22-4A and 22-4B are Xerox copies which you
furnished me this morning and which I requested from
a file that you produced on behalf of Sanders
entitled TV gaming - individual proprietary agreements.
Will you stipulate that we can use these copies
which have been marked as exhibits in place of the
originals with the same force and effect as originals?
such documents because MR. WILLIAMS: We will so
stipulate. I think it should, however, be made
clear on the record that these two documents as
they are now being placed as a part of Exhibit 22
~~were not a part of~~ the original file in Exhibit 22
and that they actually came from another file.

Q. He did testify, I believe MR. WELSH: Fine.

Q. Could you identify Exhibits 22-4A and 4B, Mr. Baer?

A. 22-4A appears to be a confidential agreement
signed by Mr. Schlaffy in which he attests to the

Q. fact that he is not going to disclose proprietary
A. data that might be disclosed to him during a visit

up here to any unauthorized persons. Not seeing this document before, I assume it was prepared by Sanders' Legal Department. ^{having seen} ~~seen~~

15 Q. You were not present when Mr. Schlaffy signed these documents? ~~more than this.~~

A. I don't believe so. I know there was a problem that morning when he came in and I think it had to do with his hesitation in signing a nondisclosure

A. agreement and I think there was back and forth ~~in~~ conversation on the telephone with Mr. Schlaffy and probably a legal person in New York about signing such documents because I think Schlaffy was delayed by this ~~so~~ he couldn't see the demonstration until sometime later in the day. Whether I was really there or not, I don't know. I would have thought that I would have been there to greet him, but I don't remember and I asked Sanders if he was present.

16 Q. He did testify, I believe, that no one from the Legal Department was present during the demonstration? leaders, how does the MR. WILLIAMS: I object to that as a mischaracterization of his testimony.

17 Q. I am sorry, I thought that is what you said.

A. Now I think I said I don't remember if anybody was

there. I didn't think so. Furthermore, I can't remember whether back then this building existed and whether the Legal Department was in this building whereas the demonstration took place on Canal Street. I can't tell you more than that.

18 Q. What happened next in your dealings with TelePrompter after Mr. Schlaffy came for the demonstration and wrote you the letter, Exhibit 22-5?

A. Well, to the best of my recollection, nothing much happened until Mr. Kahn became available and visited us up here, except for the fact either at that time or starting before that time or sometime during that period, January and February, I began to start reading about ^{the} CATV business, particularly with respect to program organization methods of that day, so that I would have a little background experience and I asked Sanders' corporate marketing operations to put a little package together as to who is in the CATV industry and who are the leaders, how does the industry operate, and background information; and the next document is one I got from - that is, 22-6 is one I got from Charles Lent, who was a member of Sanders - I believe they were

called corporate marketing operation - in which he put together a listing of five cable television companies and listed their addresses, their presidents and so forth.

19 Q. Did you contact any of those other than TelePrompter?

A. No, sir, I did not.

20 Q. You received that or at least it was dated January 22, 1968, that is Exhibit 22-6?

A. That is right.

20 Q. Did you receive it on or about that date?

A. Yes, I must have because the operation was in the same building that I was located in and so chances are Charlie Lent handed it to me instead of sending it through the mail inside the building. Shall I go on?

21 Q. Yes. What happened next in relationship with TelePromter?

A. Well, Mr. Kahn visited up here on the 13th of February.

22 Q. Did you have any communication with anyone at TelePromter prior to that meeting of Mr. Kahn here on February 13?

A. You mean between the period that Schlaffy was up

here and the time that Kahn came? by now?

23 Q. Yes. if you, notes made obviously after the time he

A. I don't remember. Please sure there must have
been telephone calls to help arrange the visit up
here. At is Exhibit 22-8.

24 Q. Will you refer to Exhibit 22-8? as a telephone visit.

A. That, seems to be out of sequence; this is dated
February 6. All right, this indicates that I
had a telephone conversation with Hub Schlaffy in
which we discussed Item 1, a cooperative program,
and I can't read my own handwriting. And, secondly,
we discussed a visit by Irving Kahn and Walter Schreiber,
who is, as I recall, some senior technical person
at Teleprompter, on Tuesday the 13th of February.
Mr. Schreiber did not come up, incidentally. In
make available someone from corporate?, is a note
on this paper also. I thought it would be nice to
have Mr. Kahn, who is a fairly important individual,
meet someone of senior status here at Sanders.
And Item 3 says that Schlaffy suggests that if the
demonstration results in interest, that a New York
or a West Coast demo may be required. That is the
end of that note.

*

Q. Is Exhibit 22-8 a memorandum made by you?

A. Yes, it was, notes made obviously after the telephone conversation took place with Mr. Schlaffy on February 6.

Q. And what is Exhibit 22-7?

A. 22-7 is a visitor's pass, that is a Sanders visitor's pass, which indicates that Mr. Kahn had visited here on the 13th of February.

Q. Did Mr. Kahn also sign a proprietary agreement?

A. I assume so, but I don't have one in this file nor do I remember where or when he did that.

MR. WELSH: I would like the reporter to mark as Exhibit 22-7A a Xerox copy furnished to me by Mr. Williams this morning and constituting a copy of an original document in another file marked or identified as TV gaming - individual proprietary agreements, furnished to us by him on behalf of Sanders. And I would also ask if we may have the same stipulation with respect to this Exhibit 22-7A as we just had with respect to Exhibits 22-4A and 4B?

MR. WILLIAMS: So stipulated

looked at him, Mr. Kahn. (Whereupon, Exhibit 22-7A
from the witness's file was marked for identification.)

28 Q. Would you identify Exhibit 22-7A?

A. Well, it appears to be a nondisclosure agreement
between Mr. Kahn of TelePromter at Sanders with
regard to proprietary interests of Sanders in
printed publications and demonstrations of TV gaming
and training apparatus at Sanders.

29 Q. Do you recall Mr. Kahn's visit to Sanders on
February 13, 1968? Who did you pick him up at

A. Yes, as a matter of fact I believe I picked
Mr. Kahn up in my station wagon and also took him
back to the airport in Boston after we had finished
the demonstration.

30 Q. You picked him up in Boston?

A. Yes, and brought him into Nashua and took him back
to Logan Airport after the demonstration. Correct

31 Q. Were you with him during the full time he was here?

A. Essentially, yes, although I don't remember whether
we saw Mr. Etlinger that morning and whether this
piece of paper was transmitted to him and sent back
by mail. I seem to remember that we took him
directly to Canal Street. I can't tell. I was

looking at 22-7, the visitor's pass, I can't tell from the visitor's pass. In any event, I don't remember that detail.

Q. Exhibit 22-7, the visitor's pass, does indicate that he was to visit you, is that correct?

A. That is right.

Q. And were you located at Canal Street at that time?

A. Yes, and certainly the demonstration was at Canal Street. I didn't meet anyone else at Canal Street.

Q. Approximately what time did you pick him up at Logan Airport?

A. Well, again I would have to guess since he came in according to the visitor's pass at 11:26 a.m., I must have picked him up somewhere around ten o'clock.

Q. Do you recall any conversation you had with him in your trip from Logan Airport to the Canal Street plant?

A. Not specifically.

Q. What happened after you arrived at the Canal Street plant?

A. I cannot remember the specifics, but I think we took him upstairs to the sixth floor to the

demonstration straight away.

- 37 Q. Who was present at the demonstration?
- A. Mr. Harrison, myself and possibly Mr. Rusch, but I am not sure about that. He may have been there part of the time or all of the time or not at all, I don't remember.
- 38 Q. Was anyone else present from Sanders?
- A. Not to my recollection.
- 39 Q. Did Mr. Kahn meet anyone else from Sanders during his visit here apart from the demonstration?
- A. Well, as the note suggests, that I was hopeful of having him meet someone in senior management, but I have no recollection of that actually happening.
- 40 Q. Who conducted the demonstration?
- A. I did.
- 41 Q. And was that also true of the demonstration with Mr. Schlaffy?
- A. Yes.
- 42 Q. Did Mr. Harrison participate in the Schlaffy demonstration?
- A. Yes, he did.
- 43 Q. What part did he take there?

A. In general, since Bill Harrison was thoroughly familiar with physical connections between the various pieces of gear that we had lashed together for that demonstration, he was there to backstop me in case some of the equipment decided to malfunction.

44 Q. Did you use overlays?

A. Yes, we did.

45 Q. Did you place the overlays or did he place the overlays?

A. It is possible we took turns; I don't recall.

46 Q. And what happened at the demonstration for Mr. Kahn?

A. I am quite certain we ran through the same demo that was given to Mr. Schlaffy a few weeks before. I am certain we followed the same flip chart which we were unable to find yesterday which listed the games so that he could get a brief view of what was going to be shown. We took him through the chase games, the ping pong games, board-type games, and eventually through a demonstration of the odd-even decoding unit which you marked Exhibit 31 yesterday.

- 47 Q. Essentially the same demonstration that you had given Mr. Schlafly?
- A. That is right.
- 48 Q. Were there any problems in your demonstration to Mr. Schlafly? I will let you know.
- A. No, I don't believe so, generally.
- 49 Q. And were there any problems in your demonstration from Mr. Kahn? TelePromter was next and that is.
- A. No, as far as I can remember, nothing.
- 50 Q. You didn't have to correct any piece of equipment or any part of your presentation from one to the next? By thereafter, he took me on a tour to
- A. Not that I remember. In the subject of 20-02,
- 51 Q. What was Mr. Kahn's reaction to the demonstration?
- A. I can only judge from what he said and what Schlafly said after his visit that they both seemed impressed with what they thought and saw. I felt the visits were encouraging, that can.
- 52 Q. When Mr. Kahn left or you deposited him at Logan Airport, how was the matter left with him and TelePromter? I was north of that area.
- Q. When you went to TeleMR. WILLIAMS: How was what matter left?

Q. I saw Mr. Kahn and I MR. WELSH: "The matter of their relationship, I might have just talked to with one subsequent witness." THE WITNESS: "I can't recall specifically, Mr. Welsh. I assume that I got the usual message, I will let you know.

- 53 Q. Do you recall what happened next?
- A. Well, in terms of identifiable activities, I think our visit to TelePromter was next and that is referred to on 22-12 which is dated 19 February, six days after Mr. Kahn had been up here. I went down to New York and met Mr. Kahn in his office. Shortly thereafter, he took me on a tour to Manhattan Cable which is the subject of 22-12, the notes to myself of what I saw there.
- 54 Q. What was Manhattan Cable?
- A. To the best of my recollection, the Manhattan Cable Company is one of two, or was then one of two cable companies operating in Manhattan. I believe Manhattan Cable had cable facilities south of 50-something street and TelePromter had those installations that were north of that street.
- 55 Q. When you went to TelePromter on February 19, who did you see?

*

A. I saw Mr. Kahn and I believe later in the day I saw

30 Q. Mr. Schlaffy, although I might have that mixed up
with one subsequent visit to TelePrompter. It was

A. Mr. Kahn himself that took me around to Manhattan
Cable facilities.

56 Q. How long were you with him on that day?

A. Into the late afternoon. 20s of February, 1958.

57 Q. And what time did you commence your visit?

A. Sometime in the morning. I took a ~~shuttle~~ from
Boston to New York.

58 Q. Did you discuss TV games with him during that visit?

A. I can't recall it specifically, but I must have since it followed his visit up here and the demonstration to him build a business on that basis.

59 Q. Was anything decided with respect to television

60 Q. games during that visit? Any involved the

A. I don't think anything definite came out of that

61 Q. visit. I suspect that I came away from that

A. meeting with a request to prepare some kind of

program. At least I think I was asked to come up with an outline for some kind of a program for a

A. possible cooperative venture, but there is not enough

paper here to refresh my memory on just what happened on that visit.

60 Q. Did you do that?

A. Yes, we did that subsequently.

61 Q. When did you do that?

A. In the course of March of '68, probably starting in the last couple of weeks of February, subsequent to my visit down there as indicated by 22-13, 14 and 15.

62 Q. What are those?

A. Those are three pieces of paper which I prepared, I believe, in cooperation with Mr. Etlinger which constitute first preliminary thinking on our part of what our interest in the cable business might be and how we might build a business on our existing capabilities in that industry.

63 Q. And that existing capability involved the TV game?

A. Well, the TV game concepts and breadboard hardware.

64 Q. And that was the hardware represented by Exhibit 30?

A. That is correct, and Exhibit 31.

In slightly to a side (Whereupon, a recess

on the same date was taken.)

65

Q. Did you identify Exhibit 22-11, Mr. Baer?

A. No, I didn't. If you will allow me to remove a staple that obscures a word up on the top, maybe I can figure out what it says. The word was visited TelePrompter with H. Schlaffy and followed by the No. 27 and I don't know what that means. I don't know whether that was 2-7 - it couldn't be 2-7.

66

Q. Would you like to staple those pages back together in such a way that you don't obscure that legend.

A. Yes.

67

Q. When did that visit with Mr. Schlaffy take place?

A. I don't recollect any visit with Mr. Schlaffy per se in New York, so I am puzzled by that. I don't recall.

68

Q. I thought I understood you to say when you were describing your visit with Mr. Kahn that you weren't sure of whether Mr. Schlaffy had been present or not and you might have met with him before or after that?

A. Right. In thinking about it, I recollect sitting in Schlaffy's office at one time. Whether that was on the same day of that, of my visit with

Mr. Kahn, or another time, I don't remember; but it looks like these were notes made based upon or actually taken at that meeting because the handwriting indicates that I either did it hurriedly on the telephone or while paying attention to some person speaking.

69 Q. Your handwriting varies on different occasions?

A. Well, it is pretty bad when I am looking at a person and writing at the same time. Mr. Kahn visiting.

70 Q. What was the gist of your conversation with him?

A. Judging from 22-11, Mr. Schlaffy went through a short background information dissertation on what TelePrompter's business consisted of as indicated by the three items in the upper right-hand corner on 22-11, and then indicated other areas that the company, that is, TelePrompter, operated in at that time. Items 1, 2 and 3. Item 4 was a suggestion by him to look at a June 21, 1960, issue of "The

A. Society of Motion Picture and Television Engineers Journal" for an article on Key-TV. By Key-TV, I

C. assume she means some kind of pay TV requiring an unscreambler.

A. There are additional notes on Mr. TelePrompter's work and interest in the television

large screen TV projection business. For example, there is a reference here to the Daytona 500 Race which they showed. And I remember Schlaffy telling me they were showing some kind of sporting event at that time somewhere in Japan or Hawaii. They evidently had traveling crews that took large screen projection equipment to various parts of the world to handle restricted viewing shows. The page finishes with a note on Irving Kahn visiting Los Angeles County. I assume 12-28 to 29, that sort of places this piece of paper back into December and that indicates not a visit, but a telephone conversation was involved. Since it says visit, I must have made a visit to see Schlaffy in December which I forgot about.

71

Q. But you - - -

A. And evidently Kahn wasn't there at the time.

72

Q. But you don't have a specific recollection?

A. I don't remember that visit at all.

73

Q. Do you recall a Walter Schreiber as a representative of TelePrompter?

A. Yes, I was introduced to him, I believe, during the visit with Irving Kahn in connection with

Kahn's question of whether I'd be interested in -
whether Sanders would be interested in building,
I believe, converters. Xerox copy of an

74 Q. Do you recall whether Mr. Schneiber had anything
to do with the TV game project?

A. Nothing at all. I think we saw an earlier reference
to him indicating that he might come and visit with
~~KAHN~~ and he didn't come and he was never involved
in any discussions neither here nor there, to the
best of my recollection. That Mr. Kahn or I did
not come to Sanders. MR. WELSH: I would now like
to ask the reporter to mark as Exhibit 22-4C a
Xerox copy of a document which - the original of
which was in a file of Sanders marked TV gaming -
individual proprietary agreements - the copy having
been furnished by Mr. Williams at my request; and
I ask, Mr. Williams, if we can have the same
stipulations with respect to this exhibit as the
other exhibits including 22-4A? MR. WILLIAMS: Yes.
and P. H. Rubin on to MR. WILLIAMS: Yes.

Who is G. Rubin? (Whereupon, Exhibit No. 22-4C
G. Rubin, Dr. Rubin is a division manager and it
was marked for identification.) Then division manager of what well then the division

- 75 Q. I now hand you Exhibit 22-4C and ask if you could
L identify that, please?
- A. 22-4C appears to be a Xerox copy of an unexecuted
L agreement for nondisclosure between Walter Schreiber
A. of TelePromter and Sanders.
- 76 Q. And Walter Schreiber is the name that appeared in
your notes of February 6, 1968, of a telephone
conversation with Mr. Schlaffy, Exhibit 22-8?
- A. Yes.
- 77 Q. Do I understand correctly that Mr. Schreiber did
not come to Sanders to view any demonstration of
the TV games? L in and We in addition to the
A. That is correct, he did not fly about the
78 Q. Now, referring to Exhibit 22-9, have you identified
that? In particular there was to talk
A. No, I have not.
- 79 Q. Would you identify it, please?
- A. Yes, 22-9 is a set of notes I made subsequent to
a visit to TelePromter by G. Rubin, ^L Etlinger
and R. H. Baer on 19 February, '68. ^A
- 80 Q. Who is G. Rubin?
- A. G. Rubin, Dr. Rubin is a division manager and was
then division manager of what was then the radiation

division.

81 Q. Of Sanders?

A. Of Sanders Associates.

82 Q. What was the purpose of that visit?

A. There were several. The reason for G. Rubin's attendance was the result of an indication by Mr. Schlaffy that they were involved in putting security devices into some downtown New York City housing project and since the optical division had built a number of experimental - mostly interrupted beam type - intrusion alarms, I mentioned Schlaffy's interest to Rubin and Rubin decided he ought to come along and talk to Schlaffy about intrusion devices. As far as I was concerned, the major reason for going down there was to talk about TV games.

83 Q. Do you know why Mr. Etlinger went along?

A. Well, since this was the second visit, that visit followed our interim discussion of how we might get into business with TelePromter as reflected in the notes that started with 22-13 and 14 and 15 which Mr. Etlinger and I put together in mutual discussions over a period of several weeks.

84

Q. I guess I still don't understand the reason why he went along, had the matter reached a negotiations stage or what stage had it reached?

A. I think any discussion that might lead to a business arrangement is a negotiation. The very first visit in this sense was a negotiation, but I am sure Mr. Etlinger was along because we are dealing with a matter which had to do with what we considered Sanders' proprietary concept and probably more importantly because Mr. Etlinger and I actively discussed between us the possible ways of getting into a business relationship and therefore it made sense for him to come along.

85

Q. That is a business relationship involving TV games?

A. Involving TV games and TelePrompter.

86

Q. Now, the date of that document is 19 February, '68, that is Exhibit 22-9, that is after Mr. Schlaffy's January 18 visit to Sanders and after Mr. Kahn's visit to Sanders, is it not?

A. That is right.

87 Q. Mr. Kahn having come on February 13, 1968?

A. Right.

88 Q. Now, that is also the date appearing on Document 22-12

which I believe you stated were your notes regarding a visit to Manhattan Cable TV with Mr. Kahn, did all of those visits occur on the same day?

A. It appears from 22-12 and 22-9 that a visit to the trip I took to Manhattan Cable with Irving Kahn was the same occasion that Etlinger, Rubin and myself went down to see Mr. Kahn. We I didn't recollect it that way, but that is how it appears to have happened.

89

Q. Did Mr. Etlinger or Mr. Rubin accompany you and Mr. Kahn on your visit to Manhattan?

A. I don't recollect that, that is why I did not connect that trip with the visit involving both Mr. Etlinger and Mr. Rubin.

90

Q. Whom did you meet with Mr. Etlinger and Mr. Rubin?

A. Irving Kahn principally and we had lunch with him, too. Connelly, according to my notes, was there, too.

91

Q. Did anyone else attend the luncheon?

A. No, sir.

92

Q. Did you meet with anybody else?

A. Yes. Well, as 22-9 indicates, we met Roger Wilson the head of CATV Engineering. I think in connection

with Mr. Kahn's interest in having me look at converters. I can't recollect meeting anyone else. I might have been introduced to somebody else in passing in the office somewhere, but I don't remember.

93 Q. Exhibit 22-9 also refers to Mr. Schlaffy?

A. Well, I am sure that Mr. Schlaffy, we met sometime during the day, but I don't believe he joined us for lunch.

94 Q. What were the converters they were interested in?

A. Many cable systems require that a piece of equipment be installed in each subscriber's home that converts incoming channels to a particular channel. Say Channel 2, 3. The subscriber's TV set is then tuned to that particular channel and the tuning mechanism on the TV set is never touched. It is left on, say, Channel 2 or 3 and the converter functions to convert incoming channels to Channel 2 or 3.

95 Q. Was there any discussion of TV games on February 19 in the meeting which included Mr. Kahn and Mr. Schlaffy?

A. I don't recall specifically, but the purpose of my going down there and Mr. Etlinger's was to discuss

96

TV games.

Q. Now, there is an item which is crossed out, there are two items under the No. 2A and 2B, 2 having a note, call R. Wilson; what is the significance of those notes?

A. That is a reminder to myself to call Roger Wilson to get some information from him on who makes the converters - and I am reading the words that were subsequently crossed out. And I believe the word is opinions on ITC Kollsman, Hamlin, of which I only recognize Kollsman as a manufacturer of converters. Under A, it says get specs. on the converter, which indicates that I knew nothing about what is inside the converter which is essentially correct except what it does in principle. The next words are preliminary verbal specs. B, send up a typical converter to Sanders for study of gaming inclusion. Get further comment. That, I guess, is the reference to an old idea of mine to take a converter which is a physical piece of equipment and already sits in the subscriber's home and put a TV game into it since it already has a power supply and some other components in it and would make it

100

less expensive to add the TV game to it. And C, determine the location of Manhattan, Brooklyn, Queens, Long Island, etc., Head equipment, any local origination equipment. If so, what.

97 Q. What does head equipment mean?

A. By head equipment is meant the facility in the cable system where local origination takes place. Such as the broadcasting of weather information or the transmission of stockmarket information. It is the place where the cable from the remote antenna location enters and gets amplified and converted to different frequencies and distributed to the subscriber's network.

98 Q. Why were Items 2A and 2B crossed out?

A. I don't know, but I have a habit of using notes when I am on the telephone and then crossing out those items that were covered and I suspect that that is what happened here.

99 Q. What is Item 3 on Exhibit 22-9? (Note handwritten)

A. Item 3 is again a note to myself which reads L. Etlinger - Next steps. Get more information on Irving Kahn,

A. etc. and then you like me to read the rest?

100 Q. Well, first of all, what is the significance

of that?

A. Using this piece of paper to pry my memory, I assume that since we were talking between us, us being Mr. Etlinger and myself, about a possible joint venture; I thought it would be desirable if we found out more about TelePrompter and the principals. Maybe I made the suggestion to get a D and B report or whatever. That is what this note indicates.

101 Q. Does that indicate things that he suggested you do? the call a business meeting or something?

A. No, it indicates a note to myself that I felt that we should get more information on Irving Kahn, which doesn't necessarily mean that he ought to do it. That Mr. Etlinger ought to do it, but that we ought to talk about doing that. And it suggests that Mr. Etlinger and I write a joint report and that we go to Mr. Joel Kosheff, I don't know what his title was at the time; he is ^{now} ~~not~~ financial.

V-Pine question, the last part of the letter.

102 Q. Was he in the financial department at Sanders?

A. Yes, and then a suggestion that we call Kahn to arrange a meeting with his programming people.

in New York. I thought it was pretty much

103 Q. Now, referring to Exhibit 22-13, would you mind
stating again what that document is?

A. 22-13? Well, so it is sort of self-explanatory what

104 Q. I am sorry, 22-13, 14 and 15, they seem to be
one document.

A. That is right. It was a working document that
was generated cooperatively between Mr. Etlinger
and myself to express in a coherent fashion our
thoughts at that time on what Sanders' interest
in the cable business might be and how we could
get a business started. I think what you are

105 Q. Was that prepared in furtherance of the suggestion
on Exhibit 22-9 of writing a joint venture agreement?

A. I think that is essentially correct.

106 Q. Could you summarize what Exhibit 22-13 through 15

107 A. contemplates with respect to what Sanders was going
to do for internal consumption and then later

sent to Mr. Kahn with MR. WILLIAMS: Well, I object
to the question, the document speaks for itself.

A. I don't see why Mr. Baer should summarize the
document.

MR. WILLIAMS: I need to make my

testimony was to the point.

THE WITNESS: I tend to agree

with Mr. Williams. I thought it was pretty clear. I think the document, among other things, was generated for internal consumption by senior management, so it is sort of self-explanatory what we had in mind seems to have been reproduced.

107 Q. Was not this information subsequently transmitted to TelePrompter?

A. I think a revision of this paper was transmitted as part of a letter sent to TelePrompter. I think the chart shown on 22-15 was sent to them and similar words were sent to them. I would have to go into the record here. I think what you are referring to, Mr. Welsh, is 22-18 which is attached to a letter from Mr. Etlinger to Mr. Kahn in which 22-13 is reproduced in part with a few changes and the chart of 22-15 is reproduced as 22-19.

108 Q. Originally Exhibits 22-13 through 22-15 were prepared for internal consumption and then later sent to Mr. Kahn with a modification of the chart which is Exhibit 22-15?

A. No, sir.

MR. WILLIAMS: I believe the testimony was to the contrary.

THE WITNESS: No, sir, not a modification of the chart. The chart appears to be identical except for a hand entry on the copy of 22-15 of intrusion alarms under Item 3, but the body of 22-13 seems to have been reproduced with some differences in 22-18 and I am just looking at it rapidly here. Words are different. There are different subheadings in the first paragraph. We would have to go line by line to see what the differences are. Certainly it is not totally identical.

109

Q. Do you recall whether any effort was made to consider sending Exhibits 22-13 through 22-15 to Mr. Kahn prior to April 12, the date of the letter, Exhibit 22-17?

A. I don't recall that.

MR. WELSH: I'd like to ask the reporter to mark as Exhibit 22 - - -

MR. WILLIAMS: Why don't we give it another number; it is not a part of Exhibit 22.

MR. WELSH: Well, we have already used these other numbers, No. 22 relating

to TelePrompter.

MR. WILLIAMS: I understand that, but most of them Mr. Baer was familiar at least with in connection with TelePrompter.

MR. WELSH: Well, these relate to cable TV, let's make it 22-53. I would like the reporter to mark as Exhibit 22-53 this copy of a letter dated March 15, 1968, to Mr. Kahn from Mr. Etlinger, the copy having been furnished by Mr. Williams and the original appearing in a file marked TV gaming, produced earlier by Mr. Williams on behalf of Sanders and I request the same stipulation with respect to this copy as we had with respect to the others.

MR. WILLIAMS: Well, we certainly don't agree on the record so far that it was a copy of the letter sent to Mr. Kahn. I agree it appears in the file.

MR. WELSH: It appears to be a copy of a letter sent to Mr. Kahn by Mr. Etlinger.

MR. WILLIAMS: I guess I don't agree to that. I don't see any signature on it that indicates that it was ever sent. I agree that

it is a copy of a document from a file entitled TV gaming. of a letter from John Etlinger dated April 9.

MR. WELSH: And may we have the same stipulation as we did with respect to the other exhibits, including 22-4A? in the record. That would be fine.

MR. WILLIAMS: Yes.

That is a letter, a MR. WELSH: Let the record show that the original of which the Exhibit 22-53 was made is in the file marked TV gaming and is a tissue carbon copy. That is the original of 22-

22-13 and the which is called the TV gaming (Whereupon, Exhibit 22-53 appears not being quite identical to 22-13, was marked for

As of April 12, 1964, the Exhibit 22-13 is for identification.)

mention the things of you to Mr. Etlinger with

regard to possible. MR. WILLIAMS: I might also

note for the record that there are other tissue

carbon copies in that same file which appear to

be copies of correspondence originally by Mr. Etlinger which bear a copy of a signature. 22-13.

Q. Would you identify Exhibit 22-16 for us, please?

Mr. Baer before that I think there was

week during which MR. WILLIAMS: You said 22-16?

or something. That's MR. WELSH: And Yes. So it's

THE WITNESS: 22-16 is a Xerox copy of a letter to Mr. Kahn from Mr. Etlinger dated April 9.

111 Q. Now, although you referred to it, I am not sure that there is an identification in the record, could you identify Exhibits 22-17, 18 and 19?

A. 22-17 is a letter, a carbon copy of a letter to Mr. Kahn from Mr. Etlinger to which is attached a Xerox copy of an enclosure that accompanied that letter to Mr. Kahn. That enclosure consists of 22-18 and 22-19 which we talked about a few minutes ago as not being quite identical to 22-13, 14 and 15.

112 Q. As of April 12, 1968, did Exhibits 22-18 and 22-19 represent the thinking of you and Mr. Etlinger with respect to possible business arrangements with TelePrompter involving the TV games, among other things?

MR. WILLIAMS: Well, I object to the question. I don't see how Mr. Baer can testify as to what Mr. Etlinger's thinking was.

THE WITNESS: I think I have answered before that I think there were several weeks during which ideas, plans, were in the state of gestation. That 22-13, 14 and 15 boils down

some of the thoughts we had during that period and that 22-18 and 19 essentially reflects the same thinking once more.

113 Q. Who actually prepared this analysis, Exhibit 22-18 and 19?

A. It was put together jointly between myself and Mr. Etlinger. Just what portion of these documents he did, vis-a-vis myself, I can't recall now. I am sure it went through several rough drafts until we finally got to these typed copies here.

114 Q. Referring to the third paragraph, which states -

looking at C, which is joint venture - such an association would require a coordinated and ^{ive} cooperated arrangement between a Sanders team and two additional teams. Who is to provide the two additional teams?

A. Rereading the document here recalls to mind that we were impressed with TelePrompter as being a competent group of people and a progressive company and with that in mind, we thought that this would get TV games into some kind of a business structure.

We would like to induce both our management and TelePrompter's management into some association which

would leave us here at Sanders concerned with the problem of design and development, possibly fabrication later on of equipment, and take advantage of TelePromter's know-how in both the CATV cable distribution field and of their program origination know-how to add an essential element which we simply didn't have knowledge of, and that is the business of special program creation, production and eventually presentation through the cable. The two groups under A and B, the software program package group and an administrative marketing group we envisioned being provided eventually by TelePromter who had the experience to run such a group to complement our capabilities.

115

Q. Did you intend that Sanders provide hardware for the joint effort?

A. Well, it was hoped that we could get the ball rolling by at least producing initial small quantities of equipment. Through all this thinking, I must admit, always ran my own personal skepticism of Sanders' ability to produce any commercial equipment ⁱⁿ ~~in the type of~~ any kind of quantity. We just don't have that capability in this company. In fact,

it is that problem that lies at the root of our perplexity as to what to do with the TV game concept, the breadboards that we developed in those early days; and, as a result of that, that kind of conflict as to what to do, that led me towards this search in the CATV area for a possible medium of exploiting the concept. As built by Sanders, did

116 Q. So, at this time, at least it was contemplated that Sanders would produce a small quantity of TV game devices, is that correct? says it in a landing throughout

A. Well, that was my concept. mentioned the availability

117 Q. And what did you plan that there be done with these devices? such as that. I think the notes say

A. I hoped that these devices would be designed and built in accordance with inputs from TelePromter based upon their know-how and that they would be structured such as to complement software produced by TelePromter. For example, if handouts - written handouts were required to play certain games, I was hopeful that TelePromter would handle that end through what I called their software group. And that if stage props had to be made for studio presentation, that they would do this again as a

part of the software group. And again they would handle the business of administrating the endeavor and do the marketing, and hopefully selling one way or another such services through maybe their monthly billing function.

118

Q. Now, with respect to the initial small quantities of TV game hardware to be built by Sanders, did you contemplate Sanders would be paid for that?

A. I don't think so because we came across a reference here earlier, at least I saw it in glancing through the package, in which I questioned the availability of \$25,000 here at Sanders for an initial development program such as that. I think the note says Harold Pope - \$25,000 available, or words to that effect. Because I felt that there was no way we could lead TelePrompter into a development program for which they would have to foot the whole bill. People in the cable business just don't do business that way, at least they didn't then, in my opinion.

119

Q. Did you intend to furnish the TV game hardware to TelePrompter?

A. I would have to reread most of this package to refresh my memory as to whether we thought there

might be monetary contribution on their part or whether we just expected that they pay their end of the program. The software production and the business of distributing and servicing any equipment, it is not too clear to me. It might come out of later documents, but starting with 22-20 - - -

120 Q. Now, did you contemplate any trial programming using the hardware that you would furnish?

A. I was certainly hopeful that that is exactly what would happen out of all these discussions.

121 Q. And that was intended to be conducted by TelePrompter?

A. Yes, sir.

122 Q. Sort of trial marketing effort?

A. Exactly. The first question that had to be answered was whether anybody out there in the real world, in the public domain, would want to play television games over a cooperative CATV channel.

123 Q. Is it a correct summary, then, that Sanders was to build hardware which was to be furnished to TelePromter for trial marketing purposes in the cable television field?

MR. WILLIAMS: Well, I object

to summarizing his testimony, his testimony speaks for itself.

MR. WELSH: I am asking if my summary is correct.

MR. WILLIAMS: I understand and his testimony is on the record. There is no reason for him to summarize his testimony at this time.

124 Q. Is this a correct summation of what you contemplated being your arrangement with TelePrompter?

A. I agree with Mr. Williams that we already went into all the aspects of why we did what we did and what was in our mind. The primary purpose for the whole exercise we just went through, Mr. Welsh, was to establish hopefully whether or not cable games were really a viable concept and could be built into a business. If that included somewhere downstream making hardware and they wanted us to do it, we would attempt to do so. We didn't preclude other people making it either, I don't believe.

125 Q. Well, one of your proposals was your making it, your contemplation to make them?

A. Yes, that was one of the proposals.

126 Q. And it was to be TelePrompter's part to take the hardware which Sanders was to make and conduct a trial marketing of such hardware in the CATV field, is that correct?

A. Well, it was our idea.

127 Q. And you presented that idea to TelePrompter, did you not?

A. Well, that idea is reflected in this document and that is what was presented.

128 Q. By this document, you mean Exhibit 22-18 and 19?

A. Yes, sir.

129 Q. Was anything ever delivered to TelePrompter by Sanders; that is, any hardware?

A. By anything, Mr. Welsh, do you mean CATV or other television games?

130 Q. Any television gaming hardware.

A. No, sir.

131 Q. Was any hardware furnished?

A. Yes, several months later we built some intrusion devices, I think twenty or twenty-five interrupted light beam intrusion devices against a purchase order from Mr. Schlafly at TelePrompter for

installation in some housing development construction project in New York where TelePrompter had the responsibility for both the cable distribution - Master ~~and~~ ^{ANTENNA} Tanner or cable distribution - and intrusion protection.

- 132 Q. And approximately how many of those were furnished?
- A. I recall that we built twenty or twenty-five equipments; they were very small.
- 133 Q. And were those furnished for trial purposes?
- A. Yes. I believe, I don't really know; but I believe they were installed, but I don't recall whether they were installed on a trial basis or whether they remained installed. I lost track of that and there was no reorder. and our first customers were in
- 134 Q. Was any arrangement entered into with TelePrompter?
- A. No, unfortunately not. cities because they had a
- 135 Q. Could you identify Exhibits 22-20 and 22-21?
- A. Yes, sir, 22-20 and 22-21 appear to be more thinking or working papers for internal consumption heremat Sanders. And probably originated during that same period where we were discussing a question of how to get into a viable business. I don't know who originated this piece of paper, whether it was

Mr. Etlinger or both of us.

136 Q. Was that paper or one containing the same information even transmitted to TelePrompter?

A. I certainly don't think so. In fact, I don't know if

137 Q. Do you know when the paper was prepared?

A. No, I do not where TelePrompter

138 Q. Now, with respect to the TV gaming hardware, were there any discussions as to possible manufacture of such hardware by TelePrompter? I summary, did

A. No, to the best of my recollection, TelePrompter per se had no hardware fabrication capability.

139 Q. Did they use converters prior to the discussion of Sanders providing the converters? namely, did

A. Certainly, as I said earlier, converters were a feature of many of the cable systems, especially those located in large cities because they had a problem of picking up the local transmitter and pumping it through the cable which is very severe.

A. You must translate the signal received by the antenna to some other channel, otherwise there is interference from direct pickup of the station at the subscriber's home and the signal coming in via the cable which results in ghosts and all other

kinds of problems] and as a result of that, the signal picked up by the cable has to be transferred to some other channel and the converter was a way of supplying the television in the subscriber's home for quite a few years prior to 1969.

140 Q. Do you know where TelePromter acquired its converters?

A. Only ^{from} the notes that we read earlier, talking about Kollsman and Hamlin and some other company ^{who} are suppliers of converters and I think Oak and Jerrold and some other companies are in this business and were in this business then, too.

141 Q. In other words, TelePromter did not manufacture them?

A. No, sir.

142 Q. Could you identify Exhibits 22-22 and 23 and 24?

A. Yes, sir, they are Section 1 of a four-section flip chart presentation reduced to 8 1/2 by 11 typed format and it starts with Exhibit 22-22 and ends at 22-48. Again it is only my reconstruction and not recollection that we started out with a flip chart or at least generated flip charts and then have somebody, possibly a secretary, type up.

what was on the flip chart and it might have been the other way around, that these documents came first and we made flip charts from them, but the whole series of documents was intended to be a presentation to management inside of Sanders. All the pertinent information, ideas, suggestions, plans that Mr. Etlinger and I had gathered together over a period of several weeks in February and March in order to get in-house support for such a venture, I would assume before going to TelePrompter and negotiating with them.

143 Q. You say you would assume, do you know?

A. No, I don't know. In fact, I don't know even whether we ever presented this.

144 Q. That was going to be my next question: Was a presentation ever actually made?

A. I have no recollection of that.

145 Q. Was any of the material in Exhibits 22-22 through 22-48 or rather 49 ever presented to TelePromter?

A. Again I don't know and I shouldn't think so because it certainly wasn't intended for them.

MR. WELSH: I believe it is noon and let's break for lunch and resume at one-thirty.

it all washed out. (Whereupon, the luncheon

- Q. You had quite a flour recess was taken.) at
point:

(Whereupon, Exhibits 22-1

- A. Well, I can only characterize the whole thing as
through 20-107 and 21-1
and 21-125 were off the record and the records
through 21-125 were marked
and you can see in the records we have a
bracelet or some identification in the sense

- Q. (By Mr. Welsh). Mr. Baer, the last communication

- A. at least in the files marked CATV and the other
files from which we extracted documents and marked
them with the prefix 22 appears to be this April 12

- A. letter from Mr. Etlinger to Mr. Kahn, No. 22-17;

was that the last communication between Sanders
and TelePromter are to try and get the FBI to do

- A. I don't know, Mr. Welsh. I am not sure.

- 147 Q. Did TelePromter ever respond to Mr. Etlinger's
letter either by way of telephone or letter?

- A. I have no recollection of anything really happening.

- 148 Q. Was the matter just dropped, do you know?

- A. I have trouble recalling if we were still in
contact because eventually this intrusion alarm
situation developed, but I fail to remember what
subsequent discussion there was with them and how

- it all petered out, which indeed it did. not . . .
- 149 Q. You had quite a flurry of activity up to this point?
- A. Well, I can only characterize the whole flurry as a big waste of time in view of the results. . . .
- 150 Q. And you don't know what occurred to cause a breakdown in the communications or the ceasing of communications? or recalling something if we did.
- A. I don't know nothing to him; and nothing much about
- 151 Q. Do you know whether it was Sanders or TelePromter that terminated the communications?
- A. I can only guess that it was TelePromter's lack of desire to move forward. We certainly did more than our share to try and push the ball along.
- 152 Q. You have no recollection of any communications with them, how about discussions with Mr. Etlinger regarding cessation of communications? . . .
- A. I don't specifically recollect any. There must have been discussion after all this activity and effort on our part. . . .
- 153 Q. Now, you stated that you also contacted Mr. Harold W. Solomon in your effort to interest somebody in TV games? in my understanding, so I understand

MR. WILLIAMS: I am not sure he used that term of interesting someone in TV games.

THE WITNESS: Well, I think I testified to that yesterday, that Mr. Solomon did come to Canal Street and we talked to him for a couple of hours and I believe I had trouble then as I have today of recalling ~~anything~~ if we did demonstrate anything to him; and nothing much came out of that visit except for some suggestion that I think we read into the record yesterday on one of the two references.

154 Q. Could you identify Exhibit 22-49?

A. That appears to be a Xerox copy of a nondisclosure agreement signed by Harold Solomon on January 24, '68.

155 Q. Do you recall Mr. Solomon signing this agreement?

A. I don't recall.

156 Q. I refer to the lower left corner and it appears that somebody made a notation, present, R. H. Baer and W. Harrison.

A. This time you got ahead of me. That is my signature and the date is my handwriting, so I must have been

there while he signed this.

157

Q. Did you have people sign an agreement like this if they were not going to be shown a demonstration?

A. Probably not.

158

Q. But you don't remember specifically whether you gave him a demonstration?

A. I don't remember specifically what we demonstrated.

A. We must have demonstrated, but I don't remember which of the breadboards specifically we demonstrated.

159

Q. Did you have more than one breadboard for demonstrating the TV games in the CATV application?

A. Yes, as of January, '68, we roughed through (2)

Q. Exhibit 31.

160

Q. Well, I believe you said you then used Exhibit 30 and 31 in the TelePrompter demonstration?

A. That is right, what I meant is we might have used an earlier piece of hardware to demonstrate to Solomon; I can't recall that.

161

Q. But you were interested in him as somebody in the CATV field, were you not?

A. That is right.

162

Q. Could you identify Exhibit 22-50?

A. That is a copy of a Sanders visitor's pass and it

shows that Mr. Solomon visited on the 24th of January.

163 Q. And that is the same date as the disclosure agreement, Exhibit 22-49?

A. Yes.

164 Q. Do you recall any further contact with Mr. Solomon after that meeting on January 24, 1968?

A. No, sir.

165 Q. Do you recall anything that occurred on that occasion of his visit?

A. Not specifically except that he wasn't much help in terms of giving advice.

166 Q. When I asked if you had any further contact with Mr. Solomon after January 24, 1968, I believe you stated you did not recall. Could you identify Exhibit 22-51 for us?

A. Yes, that is a handwritten note of mine referring to a telephone conversation with Mr. Solomon on the 5th of February, '68.

167 Q. And what was the gist of that telephone conversation?

A. It appears that I asked him for a reaction to his exposure to television games when he was up to visit us and the note indicates that he thought

it was too limited, whatever that means. TV games were too limited. I don't know what he meant by that.

168 Q. Did you discuss anything else with him?

A. Well, it looks as though we discussed what other firms are doing in cable television or were doing at that time in cable television with regard to program origination such as news services.

169 Q. Anything else?

A. Well, also, apparently, in Item 3 we discussed the use of TelePromter's arrangement which had link to do with an 18 kilomegacycle microwave length for interconnecting portions of a cable system.

170 Q. Was anything else discussed with Mr. Solomon?

A. Well, evidently on Item 4, Mr. Solomon suggested the formation of a company specifically - and I am reading - concerned with the program origination. Then onto 22-25, such company to include someone like Sanders to handle technical design, fabrication of equipment; and then there are two cryptic notes, educational people, show people.

171 Q. You have no recollection of this telephone conversation?

172 A. No, not really.

Q. Are these notes on Exhibit 22-51 and 22-52 notes prepared by you?

A. Yes.

173 Q. On or about the date that they bear?

A. Yes, sir.

174 Q. Do you recall whether there was any subsequent meeting with personnel of Merrimack Valley CATV?

A. No, there wasn't.

MR. WELSH: I'd like to ask the reporter to mark this document as Exhibit 22-54. This is another copy of an original document in Sanders' file TV gaming - individual proprietary agreements. The original document being a ribbon copy of the exhibit with signatures in ink. And I ask if we may have the same stipulation, Mr. Williams, with respect to this exhibit as we had with respect to Exhibit 22-4A and others?

MR. WILLIAMS: Yes, we may.

(Whereupon, Exhibit 22-54
was marked for identification.)

- 175 Q. I hand you Exhibit 22-54 and ask if you would identify that, please, Mr. Baer?
- A. It appears to be a Xerox copy of a nondisclosure agreement between Joseph Whelton of Merrimack Valley CATV and us, Sanders, in regard to proprietary information related to the TV games.
- 176 Q. Does that contain Mr. Whelton's signature?
- A. It does, dated and handwritten.
- 177 Q. Does it contain any other signature?
- A. Yes, Mr. Harold Solomon's signature as a witness.
- 178 Q. And does that document bear a date?
- A. Yes, February 12, '68.
- 179 Q. Now, that was just a few days after the last document we considered, I believe, the memorandum of your telephone conversation with Mr. Solomon on February 6, 1968. Do you recall a visit from Mr. Whelton and Mr. Solomon on or about the date of February 12, 1968?
- A. No, I don't remember that.
- 180 Q. After your contacts with TelePrompter and Merrimack Valley CATV, was anything further done in connection with your effort to see if a business could be built around your TV games and

hardware?

A. I really don't recall what happened during that period.

181 Q. Now, you did collect other documents relating to such an effort, did you not?

A. By such an effort, you mean - - -

182 Q. The effort to see if business could be built around your TV games and hardware?

A. If I did, I am not aware of any other documents that I collected because that is the end of my TelePrompter files and I don't remember anything beyond that.

183 Q. You have no recollection after that time of any effort?

A. Not until the time when we began to contact the television manufacturers.

184 Q. Well, that would be another effort, would it not?

A. As far as I am concerned, that is the next period of time of which I have a recollection, but I don't know what happened in the interim.

185 Q. Well, what is the first thing that happened that you recall?

A. I can only answer in generalities, that we began

to meet here in Nashua with a series of visitors from various television manufacturers' plants, demonstrated equipment to them in an effort to solicit interest.

- Q. In an effort to solicit interest in what?
- A. In television games.
- Q. When did these meetings begin? Question is to ask
- A. I can't recall that from memory, Mr. Welsh.
- Q. You did collect documents relating to those meetings in a file, did you not?
- A. Yes, I did, there is a file in this room that contains those pieces of paper that I retained at that time that pertained to those meetings.
- Q. I hand you what has been marked as Exhibit 21 and ask you if you would identify that?
- A. Yes, that is a folder in which I collected those notes, documents, that I could find in my file or kept in my file over the years that related to visitations from representatives of various television manufacturers.
- Q. What is the date of the earliest of those visits, if you can tell from those documents?
- A. May I take them apart?

- 191 Q. Surely, they have all been marked.
built around it.
MR. WILLIAMS: Off the
records no specific action that I can take.
I can only make the assumption that we would like
(Discussion off the record.)
talk among ourselves here ... to what other organizations
there might be. THE WITNESS: At the moment,
the quickest way to answer the question is to look
at the cover of the folder in which I had organized
the data numerically in consecutive order. It shows
December 23 - work (No, h14) January, '69, is the earliest date shown here.
192 Q. And you were referring to notes on the front of the
folder which you put there in organizing the material?
A. Yes, sir.
- 193 Q. And with whom was that first contact made? ~~on the~~
A. With RCA, Representatives of RCA. ~~on the~~
- 194 Q. So the latest date of any contact with the cable
television companies as it appears from the documents at least was April 12, 1968, and the
earliest date of the next contact is 14 January, 1969? ~~of that exhibit~~.
- A. Right. We are talking about the period from April 12, 1968.
- 195 Q. Was anything done in the interim between those dates

to see if Sanders or see if a business could be built around Sanders' TV games and hardware?

A. There is no specific action that I can recall. I can only make the assumption that we continued to talk among ourselves here as to what other approaches there might be.

Q. Was the project dormant during that period?

A. I don't recall that either. I will have to look at the various engineering notebooks to see whether the physical work in the lab went on or whether it terminated for a period of time.

Q. Would you now look at the notebooks and tell us whether the work went on or if it terminated, when it terminated?

A. I am ready, Mr. Welsh. Using Exhibit 9 to refresh my memory, it appears the lab work went right on through calendar '68 and into '69.

Q. Were there particular documents that you refer to that indicated that?

A. Yes, sir. There is a considerable number towards the end of that exhibit.

Q. And we are talking about the period from April, '68, till January 14, '69?

A. There is a continuous record going forward from August, '68, right into '69, but there is a gap between February 20 and August. At least so far as a cursory inspection here indicates.

200 Q. What date in February?

A. February 20 on Exhibit 9-225.

201 Q. And until what date?

A. Until August 11, '68 or 9-236. That is not strictly correct, 9-227 through 235 is a final report for task NKM covering the month of July, '68, so this indicates that there was work also done in July of '68.

202 Q. There are no documents other than that report between the period of February 20, '68, and August 11, '68?

MR. WILLIAMS: Don't hesitate, Mr. Baer, to look through all the exhibits.

THE WITNESS: I am in the process of looking through various notebooks to see whether there is any material dating back to '68.

203 Q. Which exhibit?

A. I am looking at Harrison's notebook, Exhibit 25 at

the moment. That is no help. That notebook on page 17 has an entry of January 23, '68. The next entry on page 18 being November 4, '68.

204 Q. Would that indicate that Mr. Harrison did not do any work on the TV game project during that period?

A. I don't know what it indicates.

205 Q. Do you personally recall whether there was any activity during that period from April, '68, until January, '69?

A. I don't recall that there was a hiatus.

206 Q. How about Mr. Rusch's notebook, does that for that period indicate whether he was active on the project?

A. No, I don't believe so. Mr. Rusch's latest notebook in the sequence of three is Exhibit 19 and that stops chronologically in March of '68 and even those entries don't deal with TV games, they pertain to something else. In this notebook, the latest TV game-related entries are page 58, 19-58A, which doesn't bear a date. The last one with a date is on page 54 which bears the date 1-16-68. So it appears that that is the last TV game-related entry in any of Rusch's books.

207 Q. Now, there was quite a bit of activity during the latter part of 1967, was there not?

A. '67?

208 Q. '67 as we discussed yesterday?

A. Yes, right on through March, I guess, of '68.

209 Q. You say you do not recall any hiatus; do you recall any period of lessened activity on the TV game development?

A. No, I have trouble recalling those specifics.

210 Q. Was there any particular reason for the resumption in January, 1969, of your activity in attempting to see if a business could be built around the television games and hardware?

A. I don't remember specifically what went on. I can only guess in retrospect since the technical activity started up again, that we must have had a new plan in mind, perhaps. Already at that point we talked about a licensing route, that is the best I can do.

211 Q. Do the documents in Exhibit 21 which you collected, include any notes that might refresh your recollection? Perhaps notes of conferences or

discussions at which it was decided to resume the efforts to build a business around the TV game?

A. I would have to look through them and see if there are such notes in here, Mr. Welsh, I don't remember. There is nothing in here that helps in explaining the gap in ^{terms} points of discussions or planning activities that we might have had here during that period.

212 Q. Are there any other documents to which you might refer in this connection to refresh your recollection? ^{about the period of at that time}

A. I don't know of any.

213 Q. During one of the previous sessions when you gave your testimony, there was discussion about a D.E.C., or Digital Equipment Corporation computer here at Sanders that was used in connection with the Saturn V missile launching project and you could not remember, I believe, what identification number, if any, that computer had. Also I believe you could not remember specifically when the work was done on that project. Have you had occasion since then to refresh your recollection or attempt to recall more specifically when that occurred?

A.. No, I haven't. Mr. Welsh.

214

Q. Are you aware of whether there have been any other D.E.C. computers at any facility of Sanders?

A. Well, I know now that in more recent years that there is a large PDP-10 installation somewhere in Nashua. I am not particularly well-acquainted with it. And that is a relatively recent installation. If you are speaking about the period back in '66, '67, '68, if there were any D.E.C. computers here, I certainly wasn't aware of them.

215

Q. No, I am speaking about the period of at that time until the present.

A. Well, Sanders has a number of computers in the

accounting system that are accessible for computation work. One of which is a PDP-10, that is about as much as I know.

216

Q. Do you know when Sanders acquired that PDP-10?

A. No, I don't.

217

Q. Do you recall when you found out that there was such a computer at Sanders?

A. Within the last few years.

218

Q. By few, how many?

A. Maybe three.

219

Q. Are you familiar with whether Sanders has ever had

a D.E.C. PDP-1 computer?

A. No, I don't know that.

220 Q. Have you discussed with anyone whether Sanders has ever had a PDP-1 computer?

A. No, sir.

(Whereupon, a recess was taken.)

221 Q. (By Mr. Welsh) Mr. Baer, are you familiar with the term Space War?

A. I have heard it mentioned, but I have no direct familiarity with it.

222 Q. In what regard have you heard it mentioned?

A. I don't really remember.

223 Q. When did you first hear it mentioned?

A. Very recently.

224 Q. Could you be more specific?

A. No, not really.

225 Q. Within the last year?

A. No, as a matter of fact, within the last few weeks somewhere along the line during the period between the times or during the time when my deposition was taken at one time or another I heard the words.

- 226 Q. What were the circumstances under which you heard it mentioned? When you first heard it mentioned very recently.
- A. I don't recall specific circumstances, but there was a discussion in the room, wherever it was, in this building, on the subject.
- 227 Q. Who was present?
- A. I don't recall that either. It might have been Mr. Etlinger.
- 228 Q. Who was present?
- A. Mr. Etlinger I would imagine.
- 229 Q. Who else?
- A. I don't really know, perhaps Mr. Seligman.
- 230 Q. How did it come up?
- A. I don't know. All I know is that it was referred to as a computer game and that is about as much as I know.
- 231 Q. Did the discussion include any references to where the game had ever been played?
- A. No, the discussion was not with me, the discussion was between other people.
- 232 Q. What other people? I didn't participate in it.
- A. Well, whoever it was, whether it was Mr. Etlinger -

it was in this place, I can only assume it was Etlinger and Seligman and I overheard the discussion, pieces of it.

Q. Would you relate what you heard?

A. No, yourself?

Q. Do you recall?

A. No, that is why I answered that way.

Q. I asked, Would you relate it?

A. Would I relate it; I would be happy to if I remembered.

Q. So there were more than one other person in the room at the time?

A. I can't really tell you that either.

Q. I believe you said it was a discussion between other people?

A. Yes, between two people.

Q. When you say in this place, you mean in this building?

A. In this building, I guess.

A. In this building. Now it was planned.

Q. And where in this building?

A. I don't remember. It was planned.

Q. Was it a very long discussion?

A. I don't know because I didn't participate in it.

Q. You did not participate at all?

- A. No.
- 242 Q. Did they ask you any questions about it?
- A. No, play the game very well about it.
- 243 Q. Did you make any comment or ask any questions yourself?
- A. I don't believe so... I might have asked the question, what is that? particular reason was restraining
- 244 Q. And what did they answer?
- A. That it is a computer game.
- 245 Q. Did they say whether it was played using a computer and a cathode ray tube display?
- A. No, I didn't ask them about that.
- 246 Q. Do you know whether a cathode ray tube display is used in connection with playing Space War?
- A. No, it was then after you can tell me about it.
- 247 Q. Did they call Space War a game?
- A. A computer game, I guess.
- 248 Q. Did they describe how it was played?
- A. No, this, so I assume.
- 249 Q. Did you ask how it was played?
- A. No, sim.
- 250 Q. And you have been interested in games for many years, have you not?

A. Right.

251 Q. Did you have any curiosity about finding out how
to play the game when you heard it?

A. Yes, sir.

252 Q. But you did not ask how it was played?

A. No, I ^{restrained} restrained my curiosity.

253 Q. Did you have a particular reason for refraining
from your curiosity?

A. Yes, sir.

254 Q. What was that?

A. Well, we are in the middle of depositions and I
didn't want to become acquainted with another
subject that might involve us in another three
days that may take me away from my responsibilities.

255 Q. This was then after your deposition started?

A. Yes.

256 Q. Are you sure about that?

A. Well, not totally, but it was within the last few
months, so I assume so.

257 Q. And how many months does that encompass on the
A. outside?

A. Two or three.

258 Q. Did they state where it had been played?

A. Not to my recollection. & that we discussed them.

259 Q. Did anything they say indicate to you why they brought up the subject? that the game that you

A. Well, it was quite obvious that it had something

A. to do with these cases. That was the particular

A. reason for my caution and not wanting to know the background. games that have been played at different

260 Q. Did they say what it had to do with the cases?

A. No, the game that were played in connection with

261 Q. Did either of them say how he became familiar with Space War? I typed him on the October of '65.

A. No, not a sign of whether there have been other

262 Q. I might have asked this, Did they say where it had been played?

A. You asked that and I said, no, I don't know.

263 Q. Did they say when it had been played? - see below

A. No, I played here

264 Q. Are you aware of any game having been played on

Q. a cathode ray tube or using a cathode ray tube or prior to 1966? - see with reference to the above

A. No, sir.

265 Q. Are you aware of any game played using a cathode ray tube and played prior to 1967?

A. No, sir, except for those that we played here.

266 Q. Are you aware of any game played on cathode ray tubes at any time other than the ones that you have played here?

A. No, sir.

267 Q. When you say the games that you have played here, do you mean games that have been played at Sanders in general?

A. No, the games that were played in connection with

A. equipment that we developed here and the concept that we developed here after September of '66.

268 Q. Are you aware of whether there have been other games played on cathode ray tube displays here at Sanders?

A. No, I am not.

269 Q. You have no knowledge of any other games having been played here?

A. No, sir.

270 Q. Do you have any knowledge of any demonstration or test programs used with Sanders' display systems products?

A. May I have that question again, please?

A. No, sir.

(Whereupon, the previous

question was read back to the

by the reporter.)

THE WITNESS: I guess,

Mr. Welsh, I don't understand the question. I don't know what you mean by test programs. The use of displays in test programs. It may be, but

Q. Does Sanders - do you know whether Sanders provides test programs with any of its SDS - - -

A. With its Data Systems products? ... more than

Q. Yes.

A. I don't know that, I assume there must be testsaving routines.

Q. Are you familiar with any of them specifically?

A. No, sir, I am not familiar with any of the details

A. of the Sanders Data Systems equipment beyond superficial knowledge of their function. was it solved

Q. Were you ever present during any discussion among

A. persons including either Mr. Etlinger or Mrs. Seligman and including a reference to Space War in connection

Q. with any of the applications for the patents now

A. involved in this suit? - at a meeting involving

A. No, sir. two people and I believe Mr. Williams.

- 275 Q. Did you have any discussions with Mr. Etlinger or
Mr. Seligman or did you attend any discussions where
either of them was present and the subject of the
reissue applications in suit came up?
- A. Yes.
- 276 Q. When did the first of those discussions occur?
- A. Well, I can't specifically pin down a date, but
possibly about a year ago.
- 277 Q. Were there many such discussions?
- A. No, I don't believe I was involved in more than
perhaps one or two.
- 278 Q. Referring to the first one of those which you say
took place about a year ago - - -
- A. Yes, sir.
- 279 Q. Can you be more specific as to the time?
- A. No, I cannot.
- 280 Q. With whom was the discussion had or who was involved
in the discussion?
- A. To the best of my recollection, Mr. Etlinger,
Mr. Seligman.
- 281 Q. Just the two of them?
- A. Yes, and at another time in a meeting involving
the same two people and I believe Mr. Williams.

282 Q. And when did the second meeting take place?

A. Again I can't pinpoint that; it must have been

A. Around about the same time as the first meeting.

283 Q. What was discussed in the first meeting?

meeting with Mr. WELSH. MR. WILLIAMS: Well, I object
to the question. The subject of those meetings

A. generally are protected by the attorney-client

A. privilege. At meetings, did you discuss the first

reissue application. MR. WELSH: I think we may

A. take issue on that, Mr. Williams. I believe

discussions with an applicant and an attorney

regarding knowledge of the applicant with respect

A. to prior art is not subject to the attorney-client

O. privilege. The attorney being in the position of
a conduit of that information to the patent office.

A. If she obtains any information with respect to

O. prior art in such discussions, then it no longer

is subject to the attorney-client privilege.

A. Yes, sir. MR. WILLIAMS: I think the

question was considerably broader than requesting

information on prior art. You asked, if I understood

A. the question, what was discussed at that meeting?

is yes.

MR. WELSH: That is correct.

- 284 Q. Did you discuss prior art at the first meeting with Mr. Etlinger and Mr. Seligman?
- A. I have no recollection of that.
- 285 Q. Did you discuss any prior art at your second meeting with Mr. Etlinger and Mr. Seligman and Mr. Williams?
- A. I don't recall that either.
- 286 Q. At the first meeting, did you discuss the first reissue application?
- A. I am sorry, I can't answer that either; I don't know. I would imagine so.
- 287 Q. Did you discuss both reissue applications?
- A. It may have been either/or, I don't recall.
- 288 Q. But it was a discussion with respect to at least one of the reissue applications in the suit?
- A. Yes, sir.
- 289 Q. Or applications for reissue patents, I should have said?
- A. Yes, sir.
- 290 Q. And how about the second reading, did you discuss both reissue applications?
- A. Again I don't remember. Chances are the answer is yes, but we only recall having been in two

- 291 Q. And does that same answer hold for the first meeting that you had? May I ask you a question, if that
- A. I can't really answer that.
- 292 Q. Is it likely that it was with respect to both applications? application for reissue of the
- A. I wouldn't hazard a guess on that.
- 293 Q. You don't know that it wasn't? again this afternoon,
- A. I don't know either way.
- 294 Q. Had the applications for the reissue patents been prepared at the time of the first meeting?
- A. I don't have any direct knowledge of that, but I would doubt it. I didn't see any applications.
- 295 Q. Do you know whether the applications or either of them had been filed?
- A. I don't know. I don't remember any filing date.
- Q. Prior to the first meeting?
- A. I don't know that.
- 296 Q. Do you know whether either of them had been filed prior to the second meeting?
- A. No, sir; I don't believe they were.
- 298 Q. How far apart were the two meetings?
- A. As I said earlier, I don't remember exactly when they took place. I only recall having been in two

meetings which probably were not too far apart in terms of time. Maybe a matter of weeks, if that much.

299 Q. Did you sign any papers in connection with the second or the application for reissue of the 285 patent?

A. I am sorry that I have to be vague this afternoon, but I just don't remember.

300 Q. Do you keep a desk calendar or a diary which might help you fix these dates of these meetings?

A. No, I do not.

301 Q. You do not recall signing any paper in connection with the application for reissue of the 285 patent?

A. The 285 patent, I must have signed it, but, frankly, if you are asking whether I remember specifically the act of standing somewhere in the building and signing a piece of paper, I just don't recall. If you show me the piece of paper, it may refresh my memory.

MR. WELSH: Off the record.

A. Yes.

(Discussion off the record.)

302 Q. Returning to the subject of Space War, did that come up at either of the meetings, either the

first meeting with Mr. Etlinger and Mr. Seligman or the second meeting with Mr. Etlinger and Mr. Seligman and Mr. Williams?

A. You mean in connection with the reissue?

303 Q. Yes.

A. No, there is no connection between the meetings at which I was called in to discuss the subject of reissue versus the conversations I overheard that relate to Space War. Besides, I thought I made a distinction between the two in terms of time. Overhearing the Space War conversation was a matter of a couple of months ago; the discussions with respect to reissues were about a year ago or thereabouts.

304 Q. Was anyone else present at the discussion you overheard with respect to Space War?

A. Not that I can recall.

305 Q. Do I understand correctly that that is the first time that you were familiar with the term Space War? with the term to be a letter of credit.

A. Yes. Letter of credit, from Mr. Etlinger from Henry Williams. To MR. WELSH. I have here copies which were issued to me by you, Mr. Williams, from

this file which you produced which is marked ~~closed~~
or identified Magnavox No. 637 correspondence
through 1973. Now, I am going to ask the reporter
to mark these. I find the originals of all records
except one which is this one, and, if you can agree
that that is a copy which you furnished me which
came out of this file, I can go ahead and mark
it without having to look at the file any further
for this particular document. Here are the others.
And this is obviously a retyped version of this.

(Indicating)

MR. WILLIAMS: Off the record. (Discussion off the record.)
that is the original of the document is a copy
(Discussion off the record.)
it may be substituted for it - a copy which has the
pertinence that appears MR. WELSH: I would now like
to ask the reporter to mark as Exhibit 32A the
original of a letter - the document was taken from
a Sanders file entitled Magnavox #637 correspondence
through 73. That appears to be a letter dated a
December 21, 1972, to Mr. Etlinger from Jerry Martin
of Magnavox. To mark as Exhibit 32B1 and 32B2 and
32B3 a three-page copy of a document bearing the a

date November 20, 1972, and the title is "Proposed To Magnavox For Odyssey Design And Development Support." This document being a copy furnished to me on behalf of Sanders in response to our request for production. The original of this document - or this document was furnished with copies of the other documents which are now being marked and accompanying copies of the other original documents so that it appears to have come from the same file; however, a search for the original of this document to be marked 32B1, 2 and 3 was not found just now in a search while we were off the record. Mr. Williams, may we have a stipulation that if the original of this document is found, it may be substituted for this copy which has some portions that appear to be illegible?

MR. WILLIAMS: Yes, so

stipulated.

MR. WELSH: As Exhibit 32C1 and 32C2, I ask the reporter to mark a copy of a letter dated December 2, 1972, addressed to Mr. Gerald G. Martin of Magnavox from Louis Etlinger. As Exhibits 32D1, 32D2 and 32D3 the original of a

303 Q. three-page document entitled "Proposal to Magnavox
A. for Odyssey Design and Development Support." And,
as Exhibit 32E, the original of a letter to
Mr. Etlinger from Mr. Martin dated November 14, 1972.
All of these original documents with the prefix
32 having come from that same Magnavox No. 637
correspondence through 1973 file.

305 Q. (Whereupon, Exhibits 32A,
A. 32B1, B2 and B3; 32C1 and
32C2; 32D1, D2 and D3; and
32E were marked for
identification.)

306 Q. Mr. Baer, do you recall in the latter part of
A. 1972 there being a consideration of your performing
32E a consulting service to Magnavox in the interest
of furthering the development of Odyssey?

307 Q. A. Yes, I do.

Q. I hand you what has been marked as Exhibit 32E,
A. which purports to be a letter to Mr. Etlinger from
Jerry Martin of Magnavox dated November 14, 1972;
are you familiar with that letter?

Q. A. Yes and I am. That was a letter to Exhibit 32E.

Q. How did you become familiar with it?

A. This letter is the result of suggestions on my part to Magnavox to make use of my creative capability, if you will, to help in defining future generations - by future, meaning products beyond that which Magnavox made the first year of what they came to call Odyssey.

Q. The last sentence of Exhibit 32E states, "At your opportunity, I should appreciate your proposal

A. that would detail a consulting arrangement for Ralph Baer to the further progress of Odyssey."

Q. Was anything done in connection with that proposal?

A. No, sir, beyond letter writings and proposals,

A. no.

Q. No activity ever resulted from any of these discussions?

A. Well, as a proposal?

Q. Well, was a proposal submitted to Mr. Martin in response to that request in that paragraph?

A. In that last sentence of that exhibit.

A. I don't recall. I would need the documents to refresh my memory.

Q. I hand you what has been marked as Exhibit 32B1,

B2 and B3 and ask if you recognize that?

A. Yes, I do.

Q. What do you recognize it to be?

A. I recognize it to be a draft of a proposal to Magnavox from Sanders to support design and development for Odyssey.

Q. Did you have anything to do with the preparation of that proposal?

A. Yes, in the main, if not altogether, I came up with the proposal and I am fairly certain that I am the author of this proposed effort.

Q. That appears to contain certain typewritten portions

A. with other handwritten portions, does it not?

A. Yes.

Q. I realize that some of the handwritten portions

Q. are somewhat obscured in the copying, can you recognize enough of that to determine whether you made the changes?

A. The handwritten notes at the top of 32B1 appeared to be in Mr. Etlinger's handwriting. Those that are inserted further down under 1.3, under 2.1, 2.3 are my handwriting. There is other insertions in my handwriting on the next page, on 32B2, that

I recognize; and finally on the last page, on 32B3, there are some alterations again in my handwriting.

Q. Do you recall what was done, if anything, with that proposal?

A. I don't specifically recall whether we ever cleaned
Q. this proposal up beyond this draft stage and
A. submitted it, but I think we did.

Q. I hand you now what has been marked as Exhibit 32 C1 and C2 which purports to be a letter to Mr. Martin from Mr. Etlinger dated December 2, 1972, and ask if you are familiar with that?

A. Yes, I am.

Q. Now, that refers to a submission, does it not?

A. An enclosure, yes.

Q. I hand you Exhibits 32D1, 2 and 3 and ask if that appears to be such proposal or a copy of it?

A. Right, that is what it is. That is the enclosure that went with the letter.

Q. Now, in Exhibits 32B1, 2 and 3; 32D1, 2 and 3, you list certain game categories which you were proposing, did you not?

A. Yes.

- Q. And also on page 32D2, you list examples of the various game categories, do you not?
- A. Yes, sir.
- Q. What was game category 3 of the game categories proposed?
- A. Category 3?
- Q. I believe that is at the top of page 32D2.
- A. New games requiring printed circuit program cards - and I am reading - with components, add-on accessories.
- Q. With is underlined and add-on accessories is in parentheses, is it not?
- A. Right. Did you ask me what the category was; what I meant by that?
- Q. Yes.
- A. What was meant by that was the creation of new games in which the printed circuit cards that were plugged into the first Odyssey model to effect circuit interconnection changes to go from one game to another ~~was~~ ^e complemented by passive or active components on the card to extend the scope of the original Odyssey machine and permit new ~~pace~~ games to be played that weren't within the capability

of the basic machine.

Q. Now, in Section 2.1 of this proposal and on page 2, you have examples of the game categories, is that correct?

A. Yes.

Q. Could you read what is the example for category 3?

A. Category 3, Space War. Ball spot uses novel articulation.

Q. Could you describe what you meant by that?

A. Yes, I think I can. I believe what I had in mind was floating one or two spots slowly across the screen by disconnecting the hand control inputs if the spot were a player spot; and I think that is what was intended, and driving the horizontal and vertical inputs of the player spot say via RC components. A resistor and capacitor probably an electrolytic capacitor on the plug-in card so that there would be a slow rising voltage generated

A. across the capacitor which would in turn drive either the horizontal or vertical input or both, maybe, to cause the spot to float slowly and gracefully across the screen - and presto, a space ship.

Q. space ship.

- Q. What else did you contemplate that that game would have? *(See Welch, Exhibit 32A)*
- A. Well, I would have to reach back and search my memory better, but I am pretty sure what I intended was intercept between a couple of these space capsules floating around on the screen and probably wiping one of them out with the old crowbar technique.
- Q. Upon coincidence, one of them would disappear?
- A. One or another. I don't remember how I distinguished which one would get wiped out and which one would remain.
- Q. Do you recall where you got the idea for that?
- A. No.
- Q. How about the name, where did that come from?
- A. I am afraid I am responsible for creating that ~~monocle~~ moniker. *(See Welch, Exhibit 32A)*
- Q. Do you remember anything else about what you contemplated that game would consist of?
- A. I don't remember now. I don't recall whether I had any other game function in mind. Of course, we never went beyond the concept on paper here realized.
- Q. That is indicated or is that indicated in *anywhere*, Exhibit 32A which appears to be a letter of fissile,

December 21, 1972, to Mr. Etlinger from Mr. Martin?

A. I am sorry, Mr. Welsh, what was the question; is what indicated?

Q. That you didn't go any further.

MR. WILLIAMS: Well, the document speaks for itself as to what it indicates. There is no testimony that Mr. Baer has ever seen that document before.

THE WITNESS: Well, I have seen it.

Q. Are you familiar with the document?

A. Yes, it was just a letter saying that they weren't doing anything because they were too busy. The customary I don't want to make a decision-type letter.

Q. And nothing was ever done, is that correct?

A. That is right.

Q. Did you contemplate in this Space War game as indicated on Exhibit 32D2 the provision of any more images than just the two player images?

A. I don't remember. It is possible that I visualized using a ball which was part of the game, anyhow. It could bounce back and forth or maybe a missile,

but I don't remember, it's too long ago.

Q. Do you have any other recollection about what you contemplated with regard to that game?

A. No, because we never built any of it nor was it
designed on paper.

22-3 MR. WELSH: We are past the
time that we said to adjourn for the day; therefore,
22-4C I would like to recess and adjourn until next

22-33 Tuesday subject to your checking as to whether
that is an agreeable time, Mr. Williams.

20-1 through MR. WILLIAMS: Fine.
21-125 52 Matter to be exhibited
(Whereupon, the deposition in the above-en-
d 20-1 through.
20-187 matter was continued at 4:35 p.m.)

THE STATE OF NEW HAMPSHIRE)

THE STATE)
of N.C.)
COUNTY OF Willsborough) NSS.
CR.

Subscribed and sworn to before me this 10th
day of May 1916.

1101, 2
and 3

EXHIBITS

<u>No.</u>	<u>Page</u>	<u>Description</u>
22-4A	9	Nondisclosure agreement of Herbert J. Schlaffy.
22-4B	9	Nondisclosure agreement of Herbert J. Schlaffy.
22-7A	15	Nondisclosure agreement of Irving Kahn.
22-4C	26	Nondisclosure agreement of Walter Schreiber (not executed).
22-53	39	Letter of March 15, 1968, from Etlinger to Kahn.
21-1 through 21-125	52	Material in Exhibit 21.
20-1 through 20-107	52	Material in Exhibit 20.
22-54	58	Nondisclosure agreement of Joseph P. Whelton.
32A	85	Letter of December 21, 1972, from Martin to Etlinger.
32B1, 2 and 3	85	November 20, 1972, document entitled "Proposal to Magnavox for Odyssey Design and Development Support."
32C1 and 2	85	December 2, 1972, letter from Etlinger to Martin.
32D1, 2 and 3	85	Proposal to Magnavox for Odyssey Design and Development Support. (Continued)

EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description</u>
32E	85	November 14, 1972, letter from Martin to Etlinger.